

(2011) 05 GUJ CK 0075
In the Gujarat High Court
Case No : Criminal Appeal No. 408 of 1998

Bharatbhai Chilabhai Limbachiya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 7

Citation : (2011) 05 GUJ CK 0075

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Vipul S. Modi, for the Appellant; H.L. Jani, Ld. Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, filed u/s 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction and sentence dated 22nd April, 1998 passed by the learned Additional Sessions Judge, Palanpur, in Special Case No. 229 of 1993, whereby the learned Additional Sessions Judge was pleased to convict the appellant for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for a period of one-and-half-years, and also imposed fine of Rs. 1,600/-, and in default of payment of fine; sentenced him to undergo simple imprisonment for a further period of four months. The appellant was also convicted for the offence punishable u/s 13(1)(d)(i), (ii), (iii) read with Section 13(2) of the Prevention of Corruption Act, 1988 and was sentenced to undergo rigorous imprisonment for a period of two years, and also imposed fine of Rs. 2,000/-, and in default of payment of fine; sentenced to undergo simple imprisonment for a further period of six months. However, both the sentences were ordered to run concurrently.

2. As per the case of the prosecution, the appellant was a P.T. Teacher at Primary

School at Chhapi and Unit Inspector in home guard at Chhapi. One Shri Rathod and Shri Vyas were the Officers and have authorities to select persons in home guard. As per the case of the prosecution, on 31st August, 1992 the complainant was allegedly not selected at selection parade held on that day as he could not run. It is further the case of the prosecution that subsequently, on 01st September, 1992 at about 17.00 hours, the complainant met the present appellant near the bus-stand, who allegedly told the complainant that the complainant could be selected in home guard if he gives Rs. 300/- to Shri Vyas. Thereafter, after negotiations, the complainant was ready to give Rs. 100/-. As per the case of the prosecution, the appellant told the complainant to give him Rs. 100/- on 03rd September, 1992 at any time for the said work.

3. As the complainant was not willing to make the payment, on 03rd September, 1992 he approached the Police Inspector, A.C.B., Palanpur between 11.00 hours and 11.30 hours and lodged his complaint. Thereafter, services of two panchas were sought, facts of the case were narrated to them and thereafter the experiment of U.V. Lamp was carried out with the help of anthrecene powder. The basic ingredients of the anthrecene powder were explained and made understood to the panchas as well as to the complainant. Thereafter, currency notes, i.e. two notes of Rs. 50/- each, produced by the complainant were smeared with anthrecene powder. Number of these notes were noted in the preliminary part of panchnama. Thereafter, the Police Inspector, A.C.B., gave necessary instructions to the complainant as well as to the panchas. Thereafter, preliminary part of the panchnama was drawn in the office of A.C.B. and signature of the panchas were taken below the panchnama. Thereafter, the complainant, panchas and members of the raiding party proceeded towards the office of the appellant.

4. On 13.00 hours, they stopped their vehicle near S.T. Bus Stand, Chhapi. Thereafter, the complainant and panch No. 1 went towards Primary School, Chhapi and they waited for the appellant at sewing class near the School. After 15 to 20 minutes, they saw that the appellant was coming towards school. At that point of time the complainant asked the appellant as to what happened about his recruitment in home guard, to which the appellant replied that work would be done and asked the complainant as to whether he had brought money as per their talk or not? The complainant had replied in affirmative and took out two notes of Rs. 50/- each from his pocket and handed over to the appellant. Thereafter, the appellant took a piece of papers from the earth, which was lying near the sewing class, and had mentioned the name of complainant in that paper. Thereafter, the appellant put the money in his pant. Thereafter, the complainant gave the signal to the members of raiding party as agreed. Thereupon the members of the raiding party rushed at that place and caught the appellant. Thereafter, after giving his identity, P.I. told the appellant to remain in the same position. At that point of time, it was recess time in School, and therefore, to avoid adverse effect on the mind of the students and as people gathered at the said place, all the members of raiding party and complainant and

witnesses took the appellant to Police Station, Chhapi to carry out panchnama. Thereafter, experiment of U.V. Lamp was carried out on the hands of panchas and members of raiding party excluding the complainant and the appellant, but presence of anthracene powder was not found. Thereafter, the said experiment was carried out on the hands of the appellant where on the fingers and on the thumb of left hand of the appellant, presence of anthracene powder was found. Even anthracene powder was also found on the right hand thumb and fingers. Thereafter, the panch No. 1 took out the notes from the pant of the appellant. Presence of anthracene powder was also found on the said currency notes. anthracene powder was also found in the pocket of pant of the appellant.

5. The Investigating Officer thereafter went to Palanpur A.C.B. Office and registered the offence. Thereafter, the Investigating Officer carried out investigation and recorded statements of various persons including the complainant and the panchas. Thereafter, after obtaining sanction, charge-sheet came to be filed against the appellant-accused on 09th November, 1993.

6. Thereafter, charge was framed at Exhibit 7 against the appellant for the offences punishable u/s 7 and Section 13(1)(d)(i), (ii), (iii) read with Section 13(2) of the Prevention of Corruption Act, 1988 and read over to the appellant. The appellant pleaded not guilty to the charge and claimed to be tried.

7. In order to bring home the charges leveled against the appellant, the prosecution has examined in all five witnesses and also produced documentary evidence in support of its case.

8. Thereafter, after filing closing pursis by the prosecution, further statement of the appellant u/s 313 of the Code of Criminal Procedure, 1973 was recorded wherein the appellant has denied the case of the prosecution and has pleaded his innocence. The appellant has submitted that to save Shri Lalitbhai Vyas, absolutely false case has been filed against him. He has further submitted that neither he has demanded money from anybody nor he has accepted money from anybody.

9. After considering the oral as well as documentary evidence and after hearing the parties, the learned Additional Sessions Judge, Palanpur vide impugned judgment and order dated 22nd April, 1998 held the appellant-accused guilty to the charges leveled against him as mentioned aforesaid.

10. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Palanpur, the appellant has preferred the present appeal.

11. Heard Mr. Vipul S. Modi, leaned counsel for the appellant and Mr. H.L. Jani, learned Additional Public Prosecutor for the respondent-State.

12. Mr. Modi, learned Counsel appearing for the appellant has contended that the judgment and order passed by the learned Additional Sessions Judge is illegal, invalid and improper. He has also contended that the learned Additional Sessions

Judge has not considered the case of the defense and material evidence produced on record. He has contended that the prosecution has miserably failed to prove its case beyond reasonable doubt, yet the learned Additional Sessions Judge has not considered the probable defense of the appellant and he was wrongly convicted by the trial Court. He has read the oral evidence of PW No. 1-complainant and contended that this witness was declared as hostile. Thus, though the complainant was turned hostile, the learned Additional Sessions Judge has believed the case of the prosecution. Thus, the prosecution has failed to prove the contents of the complaint. He has read the oral evidence of PW No. 2 at Exhibit 14 and contended that the present appellant has no authority to appoint the home guard and therefore, question of demand of bribe could not arise for selection of home guard. Mr. Modi has read oral evidence of panch witness at Exhibit 21 and contended that this witness has failed to prove the demand beyond reasonable doubt. He has also read oral evidence of PW No. 4-Trapping Officer at Exhibit 29 and contended that conduct of PW No. 4 creates some doubt and contended that evidence of this witness is not reliable, trustworthy and acceptable. Mr. Modi has also read oral evidence of PW No. 5-Police Inspector at Exhibit 31, ACB and contended that he is biased. He has also contended that sufficient contradiction is proved regarding demand and acceptance. He has also contended that the prosecution has failed to prove the case of demand beyond reasonable doubt. Mr. Modi has contended that the learned Additional Sessions Judge has not considered probable defense of the appellant. He has also contended that the list, which was seized is without signature.

13. Mr. Modi therefore, contended that the prosecution has failed to prove the case of demand and acceptance beyond reasonable doubt. He has contended that looking to the evidence produced on record and circumstantial evidence, prosecution has failed to prove the case beyond reasonable doubt against the appellant and therefore, prayed that present appeal is required to be allowed and appellant is required to be acquitted from the charges leveled against him.

14. As against this, Mr. Jani, learned Additional Public Prosecutor, has contended that the judgment and order passed by the learned Additional Sessions Judge is absolutely just and proper. He has contended that the prosecution has proved its case beyond reasonable doubt. He has contended that looking to the overall facts and circumstances of the case, circumstantial evidence and evidence produced on record, the order passed by the learned Additional Sessions Judge is absolutely just and legal and is not required to be interfered with. He has read oral evidence of PW No. 1-complainant and contended that this witness in his oral evidence admitted that the appellant has demanded bribe amount from him to give recruitment in home guards. This witness has also deposed in his oral evidence that in connection of demand, he met the appellant near Primary School, Chhapi and at that place, the appellant had accepted the amount from him and put the said money in his pant's pocket. The appellant has also made a note mentioning the name of PW No. 1-complainant and put the said paper with

the amount in his pant's pocket. Mr. Jani has also contended that the said amount is recovered from the pocket of the appellant. Thus, from the oral evidence of PW No. 1 demand, acceptance and recovery is proved beyond reasonable doubt. He has also contended that anthracene powder was found on the hand and in pocket of the appellant. He, therefore, contended that presumption u/s 20 of the Prevention of Corruption Act, 1988 is required to be drawn against the present appellant that the appellant has accepted the amount by his left hand and it is the duty of the appellant to rebut the said presumption by offering reasonable and probable defense. In the instant case, the appellant was not able to offer any probable defense. Mr. Jani has contended that thus, the prosecution has successfully proved the ingredients of Sections 7 and 13(2) read with Section 13(1)(d)(i), (ii) and (iii) of the Prevention of Corruption Act, 1988. Mr. Jani has contended that as per the case of the appellant if he was not the authorized officer to recruit home guard, then why the appellant has demanded the amount from PW No. 1-complainant and subsequently accepted the money. This conduct of the appellant is required to be looked into. This shows that the just to obtain illegal gratification and pecuniary advantage from the complainant, the appellant had made demand. This shows that the appellant is guilty of the charges leveled against him. He has further read the oral evidence of panch witnesses and trapping officer and contended that all the witnesses have supported the case of the prosecution. He has further contended that panch No. 1 is an independent witness and he has narrated the whole story and supported the case of the prosecution. Evidence of this witness is in corroboration with the contents of the complaint. He, therefore, contended that present appeal is required to be dismissed and judgment and order of conviction and sentence is required to be confirmed.

15. I have heard learned Counsel for the parties and perused the papers produced before me. I have also considered the submissions advanced by the learned Counsel for the parties. It is true that PW No. 1-complainant turned hostile, but, it appears that PW No. 1-complainant is won over by the appellant. The complainant-PW No. 1 in his cross-examination admitted the demand made by the appellant and in connection of that demand, the appellant had accepted Rs. 100/- from him. This shows that the conduct of the complainant is doubtful. Just to help the appellant, the complainant appeared before the Court and narrated negative version of the prosecution case. I have also perused the oral evidence of panch witness at Exhibit 21, who was present with the complainant. As per the oral evidence of this witness, the appellant had demanded the bribe amount in his presence from the complainant and the said amount was accepted by the appellant. panch No. 1 is an independent witness and he has no animosity with the appellant to falsely implicate him in the case. I have also perused probable defense of the appellant. The appellant has failed to explain presence of anthracene powder on his hand and pocket in his probable defense. The appellant has failed to rebut the presumption drawn against him u/s 20 of the Prevention of Corruption Act, 1988.

16. It appears from the papers that panch witness, who is an independent witness, and trapping officer have supported the case of the prosecution. From the oral evidence of these witnesses, demand, acceptance and recovery is proved beyond reasonable doubt. Thus, when the appellant has failed to rebut the presumption and has failed to establish the probable defense and demand, acceptance and recovery is proved beyond reasonable doubt, I am of the opinion that the learned Additional Sessions Judge has rightly convicted the appellant for the charges leveled against him. The learned Additional Sessions Judge has not committed any error in passing the impugned judgment and order of conviction.

17. I have also perused the judgments cited by Mr. Modi, learned Counsel for the appellant. I have perused the judgment in case of Kanubhai Kantibhai Patel v. The State of Gujarat reported in 1998 (1) GLH 924 . In the present case, demand, acceptance and recovery is proved beyond reasonable doubt and the appellant has failed to establish probable defense. Even it is not the case of the appellant that there was any enmity between him and the complainant. In the instant case, even contents of panchnama is also proved beyond reasonable doubt. The facts of this case and the facts of the present case are different. I have also perused the judgment in case of Rabindranath Prusty Vs. State of Orissa, In the instance case, prosecution has examined panch witnesses. panch witnesses are independent witnesses and they have supported the case of the prosecution. The prosecution has produced sufficient evidence on record to prove its case. Even currency notes were recovered from the pocket of the appellant. Thus, this judgment is not applicable in the present case. I have also perused the judgment reported in case of Suraj Mal Vs. State (Delhi Administration), In the instant case, statements of witnesses are consistent and throughout they have supported the case of the prosecution. Nothing is found against credibility of their statements. Evidence of witnesses is reliable and acceptable. It is true that mere recovery of money is not sufficient to convict the accused, but, in the instance case, demand, acceptance and recovery is proved beyond reasonable doubt. Hence, facts of this case is not applicable in the instant case.

18. As per above observation, I found that demand of illegal gratification made by the appellant-accused is proved beyond reasonable doubt through the oral evidence of complainant and panch witness as well as through documentary evidence produced on record. Presence of anthracene powder is also found on the hand and in the pant's pocket of the appellant-accused and the appellant has failed to establish his probable defense regarding presence of anthracene powder on his hand and pocket. As per the provision of Section 20 of the Prevention of Corruption Act, 1988, presumption is required to be drawn against the present appellant-accused and when the appellant-accused has failed to rebut the said presumption, defense version cannot be considered, which is tried to establish by the learned Counsel for the appellant.

19. Hence, in view of the foregoing reasons, present appeal is dismissed. The judgment and order of conviction and sentence dated 22nd April, 1998 passed by

the learned Additional Sessions Judge, Palanpur, in Special Case No. 229 of 1993, is hereby confirmed. The appellant is on bail. His bail bonds shall stand cancelled. The appellant-accused is, therefore, directed to surrender himself before the Jail Authority to serve the remaining sentence, if any, within a period of four weeks from today, failing which the Court concerned is directed to issue Non-bailable warrant against the appellant-accused to effect his arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.